

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PREMIER CAPITAL, LLC,

Case No. 03-CV-12497

Plaintiff(s),

0007

vs.

BEVERLY JOHNSON PENZELL,

d/b/a, et al.,

Defendant(s),

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DEPOSITION OF:

VICTOR RONES

On behalf of the Plaintiff

Examination of a witness beginning at 3:06 p.m. and concluding at 5:37 p.m. on Monday, September 24, 2007, taken at Freshman & Freshman, 9155 South Dadeland Boulevard, Miami, Florida, before LINDA COLUCCI, Reporter, Notary Public in and for the State of Florida at Large and Registered Professional Reporter.

## APPEARANCES:

Thomas James Morrissey, Esquire, Suite 25, 164  
Strathmore Road, Post Office Box 1336, Brookline  
Massachusetts 02446, on behalf of the Plaintiff.

Joseph W. Corrigan, Esquire, of the firm of Posternak,  
Blankstein & Lund, LLP, 800 Boylston Street, Boston,  
Massachusetts 02199, on behalf of Defendant.

Steven A. Sussman, Esquire, Suite 400, 6 Beacon Street,  
Boston, Massachusetts 02108, on behalf of  
Counterclaimant.

## ALSO PRESENT:

Richard Gleicher  
Susan Penzell

## I N D E X

## EXAMINATION

Direct Examination by Mr. Morrissey	3
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## EXHIBITS

Plaintiff's No. 1	20
Plaintiff's No. 2	22
Plaintiff's No. 3	29
Plaintiff's No. 4	44
Plaintiff's No. 5	65

REPORTER'S NOTE: Exhibits retained by Mr. Morrissey.

1 A. I believe Mr. Penzell's was the first time that I  
2 had done so.

3 **Q. Were there other occasions?**

4 A. Yes.

5 **Q. How many?**

6 A. I believe there was another time that I was  
7 involved that had to do with another attorney that  
8 passed away.

9 **Q. Do you recall when that may have occurred?**

10 A. I don't recall whether it was before or after. I  
11 think it was after Mr. Penzell.

12 **Q. Are you still engaged in that work as an**  
13 **inventory attorney?**

14 A. No.

15 **Q. So are you currently an inventory attorney?**

16 A. No.

17 **Q. Do you recall when you became inventory attorney**  
18 **with respect to Mr. Penzell's practice?**

19 A. In the year 2000, but I do not recall precisely  
20 when.

21 **Q. What were the circumstances of your becoming**  
22 **inventory attorney?**

23 A. The attorneys for the personal representative,  
24 Mrs. Penzell, petitioned the chief judge and requested I  
25 be appointed, the chief judge entered an order

1 appointing me to be the inventory attorney, and I was  
2 appointed.

3 **Q. Who were those attorneys for Mrs. Penzell?**

4 A. Mr. James Slotto.

5 **Q. To your knowledge, does he continue to represent**  
6 **Mrs. Penzell?**

7 A. I think so.

8 **Q. And does he represent her in connection with the**  
9 **probate of Mr. Penzell's estate?**

10 A. I think so.

11 **Q. Becoming an inventory attorney requires an**  
12 **application; does it not?**

13 A. If you're talking about the petition to Judge  
14 Farina by the personal representative through the  
15 attorney, the answer to that would be yes. If you're  
16 talking about some other form of application, no.

17 **Q. At some point in time did you express to anyone**  
18 **your willingness to become inventory attorney?**

19 A. I am not quite sure what the question is geared  
20 toward. If the question is being asked whether or not  
21 Mr. Slotto asked if I was willing to serve as inventory  
22 attorney and if Judge Farina asked if I was willing to  
23 serve as inventory attorney, that is true, both of them  
24 asked me, and I replied in the affirmative. If there is  
25 some other aspect of the question being asked, I'm

1 afraid I do not understand.

2 Q. Why did you agree to become inventory attorney?

3 A. Because they asked and I was willing to do so.

4 Q. Who do you mean by they?

5 A. They asked, and I said I was willing to do so.

6 Q. They being Mr. Slotto?

7 A. And Chief Judge Farina.

8 Q. Did you have any conversations with Mrs. Penzell  
9 with respect to serving as inventory attorney prior to  
10 your appointment as inventory attorney?

11 A. Yes.

12 Q. And how many such conversations?

13 A. I do not recall.

14 Q. Do you recall the substance of those  
15 conversations?

16 A. Not particularly, other than being asked to  
17 serve.

18 Q. The probate court, Judge Farina, enters an order  
19 appointing you; is that correct?

20 A. That is incorrect. Chief Judge Farina is the  
21 chief judge. The judge who had been the probate judge  
22 was a different judge altogether.

23 Q. I stand corrected.

24 Prior to becoming inventory attorney, did you  
25 have any familiarity with Mr. Penzell's practice?

1 me to.

2 A. You can identify it if you want to.

3 MR. CORRIGAN: We can stipulate it's the  
4 notice.

5 Q. Yeah, we can stipulate it's the notice.

6 As inventory attorney, sir, did you perform  
7 different kinds of legal services for different clients?

8 A. Yes.

9 Q. And as I understand your testimony, it would  
10 depend upon the matter involved as to what the precise  
11 nature was of those services, correct?

12 A. Yes.

13 MR. MORRISSEY: If you could mark this as  
14 Exhibit 2.

15 (Plaintiff's Exhibit No. 2 was marked for  
16 identification.)

17 Q. Mr. Rones, I wonder if I could place before you a  
18 one-page document that's been marked as Exhibit 2 and  
19 ask you to take a look at it for me.

20 A. Fine.

21 Q. Have seen that document before, sir?

22 A. Looks familiar.

23 Q. Okay. And can you identify it for the record,  
24 please?

25 A. Appears to be a letter dated May 17th, 2001,

1 under my signature regarding the matter of NationsBank,  
2 NA, versus Hiram Senior Martinez, Sr., Case Number  
3 86-2946A CA 03.

4 Q. And directing your attention to the first  
5 paragraph of this letter -- by the way, is that your  
6 signature down at the bottom?

7 A. It appears to be.

8 Q. Was that letter prepared in connection with your  
9 work as inventory attorney?

10 A. It would appear to be so.

11 Q. Was NationsBank a client of the Penzell law firm?

12 A. That is correct.

13 Q. And by the way, when I use the phrase Penzell law  
14 firm, if it's acceptable to you, I'll use that as a  
15 shorthand for Mr. Penzell's practice both prior to and  
16 following his decease. Is that acceptable to you just  
17 as a shorthand?

18 A. Yes, sir.

19 Q. Directing your attention to the first paragraph  
20 of that letter, it makes reference to some work that you  
21 performed on behalf of the bank; is that right?

22 A. Yes, sir.

23 Q. I wonder if you could read for the record the  
24 final sentence, the third sentence, of that paragraph.

25 A. The third sentence states as follows, quotes,

1 "Please be advised that we are returning this file to  
2 inactive status," close quotes.

3 **Q. What was inactive status as you use that phrase**  
4 **in this letter, sir?**

5 A. That was a status that was, as I understood, a  
6 term of art that the folks at NationsBank NA had  
7 assigned to particular files that they had indicated  
8 whether work was to be handled as to any further work  
9 was to be done on or not done on, in other words,  
10 whether further efforts, further recordings, further  
11 effort was to be placed on those, and as I recall, I  
12 think this, again I'm not sure, but I think this was one  
13 of the ones that the bank would not allow further work  
14 to be done without permission, but I'm a little bit  
15 vague on that.

16 **Q. Okay.**

17 A. And there were certain ones that the bank would  
18 say on the inactive status you are not to expend another  
19 dime, do another thing, nothing whatsoever and don't you  
20 dare do anything further without us telling you to.

21 **Q. With reference to that sentence, who is doing the**  
22 **return?**

23 A. I'm sorry?

24 **Q. Who is doing the return?**

25 A. The what?

1 A. Penzell's office.

2 Q. Was this following your tenure as inventory  
3 attorney?

4 A. The way you worded that is strange because I was  
5 inventory attorney, got a call that Denise said that Mr.  
6 Maimonis had called before and wanted to speak to the  
7 inventory attorney, and I was at the time still  
8 inventory attorney, and he spoke to me.

9 Q. And you don't recall the timeframe of that?

10 A. I think 2002 or something like that. It was a  
11 couple months before Susan Noe came on board. It was a  
12 weird conversation.

13 Q. How was it weird?

14 A. He called, introduced himself and said Premier  
15 had taken over some of the files or some of the cases  
16 that NationsBank had had, and I said well, it's news to  
17 me, send something down showing me this, and if it's  
18 true, you need to get a new attorney or something, and  
19 I'm the inventory attorney. He said maybe we want to  
20 hire you. I said all right, fine. He said but we have  
21 a standard form that we have to hire all of our  
22 attorneys. I said good. Send it down and I'll look at  
23 it. He said okay. Never heard anything. A month or  
24 two later, he said I want to follow up. I said where's  
25 the agreement? He said oh, yeah. I never heard

1 anything. Strange. That was it.

2 Q. Any letters or other written communications  
3 reflecting your contact with Mr. Maimonis?

4 A. No. He never sent me the letter showing me that  
5 it had actually happened that they'd acquired it, and  
6 when I had Denise call Bank of America, they said -- it  
7 was weird. At least, that's what I recall vaguely.  
8 It's strange. There might have been a letter or  
9 something. I don't know.

10 Q. At some point in time, did Bank of America give  
11 notice to the Penzell law firm that certain litigation  
12 matters had been conveyed to Premier Capital?

13 A. I think so.

14 Q. Do you recall what the form of that notice was?

15 A. No. If you show it to me, I might remember.

16 Q. Do you recall whether it was written?

17 A. Probably. Show it to me. Maybe.

18 Q. Was it directed to you; do you remember?

19 A. I don't know.

20 Q. Let me show you -- let's have it marked as the  
21 next numbered exhibit to Mr. Rones' deposition.

22 (Plaintiff's Exhibit No. 5 was marked for  
23 identification.)

24 Q. I'm going to show you a document that was marked  
25 as Exhibit 5 to your deposition. I wonder if you could

1 A. I don't know.

2 Am I done with Exhibit 5?

3 Q. Yeah, absolutely. Let's move on.

4 Have you ever been involved in preparing a bill  
5 for your legal services to be submitted to Premier  
6 Capital?

7 A. Maybe. I don't know.

8 Q. Are you owed money by Premier Capital?

9 A. As an individual, no. As inventory attorney, I'm  
10 owed money insofar as work was done on estate work for  
11 files that pertain to work being done for NationsBank.  
12 Is that what you're asking me?

13 Q. Yes.

14 A. But that would not be because, see, it's a little  
15 complicated the way you asked the question because the  
16 work that would be done would attach to the cases  
17 themselves because there's no relationship, so to speak,  
18 vis a vis a client because Premier was never a client.  
19 It would only attach to the case itself as termination,  
20 early termination of a contingency agreement or if a  
21 full contingency occurred, so I'm trying to answer you  
22 fully when you say that.

23 Q. What I'm unclear about from your answer is  
24 whether you believe, in testifying today, that Premier  
25 Capital is liable for any legal services performed by

1     **you for either Premier or any other entity.**

2         A. Well, the way you word that is not completely in  
3     keeping with my understanding of how it would be  
4     accurately reflected. In other words, it would be a  
5     claim that would be reflected, so to speak, against the  
6     case itself, so it would be against the proceeds in the  
7     form of a lien. It would not be per se because I've  
8     never had, nor, as I understood it, has the Penzell firm  
9     ever had a relationship in any manner with Premier.

10        **Q. But if those fees are associated with a**  
11     **predecessor of Premier, under your reasoning, as I**  
12     **understand it, Premier is liable to the Penzell law firm**  
13     **for payment of those legal services.**

14               MR. CORRIGAN: Objection. His testimony  
15     wasn't about a predecessor, it was about the file.

16        **Q. Okay. About the file. The file involved a**  
17     **client other than Premier Capital.**

18         A. There's a big distinction between the proceeds of  
19     the case versus the client. That distinction is not --  
20     I can't emphasize enough. Sounds like it's being  
21     glossed over, and it's a major distinction down here in  
22     Florida.

23        **Q. To your understanding, was Premier ever a client**  
24     **of the Penzell law firm?**

25         A. No.

1       **Q. At any point in time?**

2       A. No.

3       **Q. And what's the basis of your understanding in**  
4 **that regard?**

5       A. Number one, I checked through, I saw no retainer  
6 agreement. Number two, in all my representation I found  
7 no place where I ever entered an appearance on behalf of  
8 Premier. Three, my contacts and my work, there was  
9 never anything on behalf of Premier. Four, the few  
10 times I spoke with Maimonis was simply to say get your  
11 own counsel in here or if you want to make a deal with  
12 me, give me an agreement and I'll see if I'll live with  
13 it. He was going to send me down an agreement. He  
14 never sent me one down. Without an agreement, I  
15 wouldn't do anything. My job was to protect existing  
16 clients, and the only existing client that I had was  
17 NationsBank that had anything to do with those files.  
18 That was it. So I had nothing to do with you folks.

19       **Q. Do you understand Premier to have any liability**  
20 **in connection with the formal letter agreement that you**  
21 **drew up that incorporated the 1999 and 1998 agreements?**

22       A. Only to the extent that we're speaking about the  
23 proceeds of collections or the proceeds generated from  
24 the recovery of those cases, which is different than the  
25 contention that there is liability of you folks as to

1 being a client per se from the firm, and that's a  
2 distinction that we have here in Florida. I don't know  
3 if it's a distinction you have up where you folks are  
4 from.

5 Q. We have that.

6 How about liability under that formal letter  
7 agreement to the Penzell law firm of Premier for hourly  
8 charges as opposed to a share of any recovery?

9 A. Same thing applies. In Florida if the  
10 contingency is substantially fulfilled, then you are  
11 entitled to recover the full contingency fee. If you're  
12 terminated before that happens, then you're entitled to  
13 recover the hourly and not the full contingency.

14 Q. Is it your understanding that such a termination  
15 occurred with respect to Premier and the Penzell law  
16 firm?

17 A. That is what I have been told. I do not know  
18 that from factual basis of knowledge.

19 Q. Do you recall that as having occurred in  
20 connection with your communications with Mr. Maimonis?

21 A. No.

22 Q. You don't?

23 A. I do not know that.

24 Q. But you did not view the message sent, the  
25 information you obtained from Mr. Maimonis in his

1     **Penzell law firm, inclusive of you or Mrs. Noe as**  
2     **inventory attorneys, owe any duty in connection with**  
3     **such termination?**

4         A. To NationsBank or Bank of America. To them we  
5     owed a duty to continue whatever information or  
6     assistance we had to Bank of America and NationsBank, we  
7     owed a duty to hold on to the files, cooperate and  
8     retain those files. If Bank of America or Nationsbank  
9     wanted the files, we could possibly tell them what  
10    information we had in the file with Bank of America and  
11    NationsBank. To Premier, we had nothing.

12        **Q. And that is under the letter agreement you've**  
13    **testified earlier?**

14        A. No. It had nothing to do with the contract. It  
15    had to do with Florida law, how the rights and  
16    everything govern that. What happens is when you  
17    appoint an inventory attorney, the obligations of the  
18    inventory attorney in Florida law take precedence over  
19    what I have to do, notwithstanding what the contract and  
20    wonderfulness of the contract are, and that's why we had  
21    that whole hearing before Judge Farina is because he had  
22    to tell us what had to happen and what had to be done,  
23    and he's the one that metes out what must be done,  
24    notwithstanding the contract.

25        **Q. He did so in this case, didn't he?**